



Entered on Docket
October 12, 2006

Hon. Linda B. Riegle
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

Case Nos. BK-S-06-10725 LBR
Case Nos. BK-S-06-10726 LBR
Case Nos. BK-S-06-10727 LBR
Case Nos. BK-S-06-10728 LBR
Case Nos. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
Case No. BK-S-06-10725 LBR

**STIPULATION AND ORDER FOR
FIRST TRUST DEED FUND
EQUITY SECURITY HOLDERS**

In re:
USA SECURITIES, LLC,

Debtor.

**COMMITTEE TO REPRESENT
FIRST TRUST DEED FUND IN
INTERPLEADER ACTION**

Affects:

- ☐ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

**[AFFECTS USA CAPITAL FIRST
TRUST DEED FUND]**

Date: N/A

Time: N/A

USA Capital First Trust Deed Fund, LLC ("FIRST TRUST DEED FUND") and The Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the "TTDF COMMITTEE") represent and stipulate as follows:

I. Background

1. USA Commercial Mortgage Company ("USACMC") and FIRST TRUST DEED FUND filed petitions for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006. The cases are jointly administered, and both of these debtors and their affiliates are jointly represented by Ray Quinney & Nebeker P.C. and the Schwartz & McPherson Law Firm.

2. USACMC has brought an interpleader action in this bankruptcy case, Adversary No. 06-1167 LBR (the "Interpleader Action") in which USACMC is the plaintiff and the estate of FIRST TRUST DEED FUND and others are the defendants. The Interpleader Action has been brought to determine the ownership of the funds in USACMC's Investor Trust Account, which contains approximately \$1.7 million and against which there are approximately \$3.4 million in claims by persons who either sold or purchased fractional interests in direct loan investments. USACMC makes no claim against these funds. The estate of FIRST TRUST DEED FUND has a claim for approximately \$100,000 against these funds. Bankruptcy counsel for USACMC and FIRST TRUST DEED FUND believes that it would appear to be inappropriate for counsel, who represent both the estate of USACMC and the estate of FIRST TRUST DEED FUND in these bankruptcy proceedings, to represent either the estate of USACMC or the estate of FIRST TRUST DEED FUND in the Interpleader Action. USACMC, with Court approval, has employed David W. Huston, Esq. as its Special Conflicts Counsel for the Interpleader Action.

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II. Scope of Representation

3. Through this stipulation, and subject to Court approval, FIRST TRUST DEED FUND authorizes the FTDF COMMITTEE to represent the estate of FIRST TRUST DEED FUND in the Interpleader Action discussed above. There does not appear to be any conflict in these matters which would prevent FTDF COMMITTEE from representing the estate of FIRST TRUST DEED FUND in the Interpleader Action.

4. Stutman Treister & Glatt, Professional Corporation ("STUTMAN") is court approved counsel for FTDF COMMITTEE in the bankruptcy case. STUTMAN will represent FTDF COMMITTEE as the representative of the estate of FIRST TRUST DEED FUND in the Interpleader Action, and will continue to represent the FTDF COMMITTEE in all other matters in the bankruptcy case.

III. Compensation

5. FIRST TRUST DEED FUND proposes that STUTMAN will charge the FTDF COMMITTEE for its services in connection with the Interpleader Action in accordance with its currently authorized employment.

IV. Stipulated Representation Permitted

6. Stipulated representation of a debtor's estate by an official committee is permissible under *Liberty Mutual Insurance Company v. Official Unsecured Creditors Committee of Spaulding Composites Co. (In re Spaulding Composites Co.)*, 207 B.R. 899, 904 (9th Cir. BAP 1997), which stated:

This case is somewhat unusual in that the setting for derivative litigation often involves a debtor-in-possession ("DIP") who is hostile to proposed litigation. See e.g., *Curry*, 57 B.R. at 828; *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d at 247; *In re STN Enterprises*, 779 F.2d at 901. In that setting, the concern is that the DIP is failing to attend to litigation which it should pursue. Here, however, rather than opposing the Committee's suit, Spaulding approved of it, and Liberty argues the converse to the above -- that is, Liberty argues that the Committee is fostering estate litigation which should not be pursued. The question,

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1 then, is whether a DIP may stipulate to representation by an unsecured
2 creditors' committee. We hold that it may.

3 See also, *In re Commodore Intern. Ltd.*, 262 F.3d 96, 99-100 (2nd Cir. 2001); *In re Walnut Leasing*
4 *Co.*, 1999 WL 729267 (E.D.Pa. 1999). FIRST TRUST DEED FUND also relies on Bankruptcy
5 Code § 1103(c)(5), which states: "A committee appointed under section 1102 of this title may
6 perform such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5).
7 See, *Official Committee of Unsecured Creditors of Cybergene Corp. ex rel. Cybergene Corp. v.*
8 *Chinery*, 330 F.3d 548, 562 (3rd Cir. 2003); *contra, In re Fox*, 305 B.R. 912 (10th Cir.BAP 2004).
9 The potential recovery of approximately \$100,000 in the Interpleader Action will benefit the estate
10 of FIRST TRUST DEED FUND and the equity security holders represented by the FTDF
11 COMMITTEE.

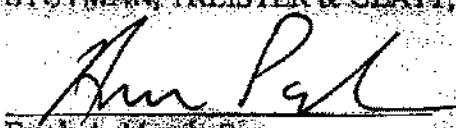
12 STIPULATION

13 FIRST TRUST DEED FUND stipulates that its estate be represented by FTDF
14 COMMITTEE in the Interpleader Action.

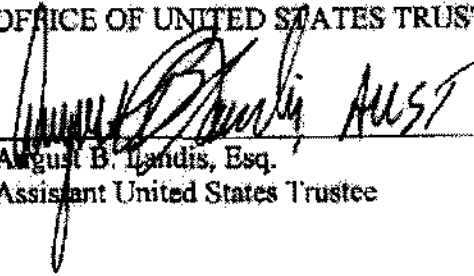
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27 Counsel for the Official Committee of Equity
28 Security Holders of USA Capital First Trust
Deed Fund, LLC

1 OFFICE OF UNITED STATES TRUSTEE

2 
3 August B. Landis, Esq.
4 Assistant United States Trustee

5 ORDER

6 IT IS SO ORDERED.

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